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MAY 15 11 18

EXECUTIVE SECRETARY

May 15, 2000

VIA HAND DELIVERY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Petition for Arbitration of the Interconnection Agreement Between  
BellSouth Telecommunications, Inc. and NOW Communications, Inc.  
Pursuant to the Telecommunications Act of 1996*  
Docket No. 00-00141

Dear Mr. Waddell:

BellSouth Telecommunications, Inc. previously submitted the Staff Recommendation in the referenced docket, however, they failed to submit the Final Recommendation of the Administrative Law Judge. Enclosed are fifteen copies of the Final Recommendation of the Administrative Law Judge. If you should have any questions, please feel free to contact me.

Very truly yours,

FARRIS, MATHEWS, BRANAN  
BOBANGO & HELLEN, P.L.C.

*Charles B. Welch, Jr.*  
Charles B. Welch, Jr.

CBW:ccw

Enclosure

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POSTED  
5/15/00

BEFORE THE  
LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. U-24762

BELLSOUTH TELECOMMUNICATIONS, INC.

VERSUS

NOW COMMUNICATIONS, INC.

RECEIVED  
MAY 15 2000  
EXECUTIVE SECRETARY

*In re: Petition for Arbitration of Interconnection between BellSouth Telecommunications, Inc. and NOW Communications, Inc. pursuant to the Telecommunications Act of 1996, 47 U.S.C. 252.*

**FINAL RECOMMENDATION OF THE  
ADMINISTRATIVE LAW JUDGE**

This *final* recommendation is being issued and forwarded to the Commissioners pursuant to Rule 56 of the Rules of Practice and Procedure of the Louisiana Public Service Commission. The recommendation will be considered and voted on by the Commissioners at an upcoming monthly Commission meeting.


Due to time constraints imposed upon the Commission by Section 252 of the Telecommunications Act (47 U.S.C.A. 252) with regard to arbitration proceedings, the recommendation procedure has been abbreviated, omitting the issuance of a proposed recommendation as well as the opportunity for parties to file exceptions to the proposed recommendation.

All parties are advised to familiarize themselves with the Commission's Rules of Practice and Procedure, including provisions within Rule 56 which permit parties to request (within five working days of issuance of the *final* recommendation) the opportunity to present oral argument at the Commission meeting at which this recommendation will be considered. Copies of the Rules of Practice and Procedure of the Louisiana Public Service Commission are available from the Administrative Hearings Division.

All parties are further advised that they may ascertain whether this recommendation will be considered at the Commission's next monthly meeting by accessing the Commission's web page at <http://www.lpsc.org> and "clicking" on **Official Business** to view the Agenda for the Commission's upcoming monthly meeting. Alternatively, parties may obtain this information by calling the Commission's Administrative Hearings Division at either of the following telephone numbers:

(225) 342-3157 or (800) 256-2397.

Baton Rouge, Louisiana, this 4<sup>th</sup> day of May, 2000.

  
Valerie Seal Meiners  
Chief Administrative Law Judge

cc: Official Service List  
Via Fax Transmittal

**Louisiana Public Service Commission  
Administrative Hearings Division  
16th Floor, One American Place  
Post Office Box 91154  
Baton Rouge, Louisiana 70821-9154  
Telephone (225) 342-3157  
Fax (225) 342-5610**

**LOUISIANA PUBLIC SERVICE COMMISSION**

**DOCKET NO. U-24762**

**BELLSOUTH TELECOMMUNICATIONS, INC.  
VERSUS  
NOW COMMUNICATIONS, INC.**

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***In re: Petition for Arbitration of Interconnection between BellSouth Telecommunications, Inc. and NOW Communications, Inc. pursuant to the Telecommunications Act of 1996, 47 U.S.C. 252.***

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**DRAFT ORDER NO. U-24762**

**(Final Recommendation of Administrative Law Judge)**

***Nature of the Case:***

In this proceeding, BellSouth Telecommunications, Inc. ("BellSouth") seeks arbitration of a resale agreement between BellSouth and Now Communications, Inc. ("NOW"). BellSouth filed its petition on February 25, 2000, and notice of the proceeding was published in the Commission's Official Bulletin on March 17, 2000. On March 17, 2000, NOW filed a Motion to Dismiss BellSouth's Petition. BellSouth and the Commission Staff oppose NOW's motion.

***Jurisdiction of the Commission:***

Section 252 of the Telecommunications Act of 1996 sets out procedures by which telecommunications companies may negotiate, arbitrate, and seek approval of agreements for interconnection, resale, or purchase of unbundled network elements. After a certain period of voluntary negotiations, Section 252 provides a window of opportunity for either party to petition the State commission for arbitration of any unresolved issues. That "window" occurs "from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation." 47 U.S.C.A. §252(b)(1). Under this statutory arrangement, the State commission considers the disputed issues and resolves them in a manner which ensures compliance with the requirements of Section 251 of the Telecommunications Act and any regulations promulgated by the Federal Communications Commission pursuant to Section 251.

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**Background:**

The facts leading up to BellSouth's filing of its petition for arbitration are not the subject of dispute.

The resale agreement which is the subject of BellSouth's petition for arbitration is not the first agreement entered into between BellSouth and NOW. The two companies entered into a resale agreement on June 1, 1997. The agreement had a two-year initial term, with an automatic renewal provision, providing for "two additional one year periods unless either party indicates its intent not to renew the Agreement." *June 1, 1997 Agreement at part I.* The automatic renewal provision further provides as follows:

Notice of such intent must be provided, in writing, to the other party no later than 60 days prior to the end of the then-existing contract period. The terms of this Agreement shall remain in effect after the term of the existing agreement has expired and while a new agreement is being negotiated.

While the parties appear to disagree as to the calculated length of the automatic renewal period, neither party has alleged that it provided written notice of intent not to renew the agreement no later than 60 days prior to May 31, 1999, the end of the initial term of the June 1, 1997 Agreement.

At a point during the initial term of the June 1, 1997 Agreement, BellSouth began proposing changes to the resale agreement. NOW was uninterested and unresponsive to BellSouth's proposed amendments to the resale agreement. On August 20, 1999, Bell made a written request to NOW for negotiation of a new resale agreement. It is unclear how much negotiation took place in response to BellSouth's request, and, in fact, the parties were involved in litigation against each other in federal court during 1999.

On January 20, 2000, NOW informed BellSouth that it wanted to negotiate an *interconnection* agreement rather than a *resale* agreement, and negotiations to that end began. In conjunction with its request to negotiate an *interconnection* agreement, NOW requested a 30-day extension of the statutory time frame for negotiations prior to the arbitration "window," apparently believing that the "window" for petitioning the Commission for arbitration was at hand. On January 26, 2000, BellSouth agreed both to the requested extension and to a "transition from negotiations of a resale agreement to negotiations of an interconnection agreement to include provisions for combinations of unbundled network elements pursuant to the FCC's 319 Order."

At some point after February 17, 2000, the negotiations for an *interconnection* agreement came to an end, as NOW realized that such an agreement was not financially feasible. The parties subsequently resumed negotiations toward a new *resale* agreement. On February 22, 2000, NOW requested another extension of the statutory time frame for negotiations prior to arbitration — this time a 20-day extension. On February 24, 2000, BellSouth declined the 20-day extension request.

***BellSouth's Petition for Arbitration:***

BellSouth filed its petition for arbitration of a *resale* agreement between BellSouth and NOW on February 25, 2000. In the petition, BellSouth alleges its timely filing, claiming that the "window" for filing a petition for arbitration would end on February 26, 2000.<sup>1</sup> BellSouth is seeking resolution by the Commission of ten issues relating to provisions of a proposed resale agreement between BellSouth and NOW.

***NOW's Response and Motion to Dismiss BellSouth's Petition for Arbitration:***

NOW's response to the petition alleges that BellSouth and NOW have not reached final agreement on any terms of BellSouth's proposed resale agreement. Further, in a Motion to Dismiss, NOW argues that the Commission lacks jurisdiction to consider the petition for arbitration filed by BellSouth. NOW contends that (1) NOW has never requested renegotiation of its June 1, 1997 resale agreement with BellSouth which remains in force today; (2) BellSouth has attempted to force renegotiation of the resale agreement and that it has no right to do that; (3) BellSouth's petition is not timely filed within the "window for arbitration;" and (4) BellSouth did not comply with other technical statutory requirements. Concerning the timeliness of the filing, NOW argues that the statutory time frame for filing petitions for arbitration cannot be waived by the parties.

BellSouth and the Commission Staff reject NOW's arguments. Those parties specifically note, with regard to the issue of timely filing of the petition, that NOW, itself, requested the 30-day extension relied upon by BellSouth in delaying the filing of its petition.

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<sup>1</sup>The caption of BellSouth's Petition and the *In re:* of this docket both refer to the arbitrating of an *interconnection* agreement; however, the allegations of the Petition state that arbitration of a *resale* agreement is specifically sought.

***Discussion and Analysis:***

Within the muddled factual background of this case, the Commission finds the following undisputed circumstances compelling:

- As neither party provided written notice that it intended *not* to renew the June 1, 1997 Agreement in accordance with the terms of the Agreement, the June 1, 1997 Agreement is currently in a period of automatic renewal, at least until May 31, 2000.
- BellSouth, not NOW, requested renegotiation of the June 1, 1997 Agreement on August 20, 1999, the date on which BellSouth now relies in establishing the start of the negotiation/arbitration time frame set out in Section 252 of the Telecommunications Act. NOW has not sought renegotiation of the existing resale Agreement.
- On January 21, 2000, NOW suggested negotiation of an *interconnection* agreement, to replace the existing *resale* agreement, but the parties agree that those negotiations have come to an end.

Section 252(b)(1) of the Telecommunications Act sets up the statutory time frame for negotiation/arbitration, using as a start date "the date on which an incumbent local exchange carrier receives a request for negotiation under this section." (Emphasis supplied.) Under the circumstances of this case, BellSouth, the incumbent local exchange carrier, has not received a request from NOW for negotiation of a resale agreement. NOW's only request for negotiation was its January 21, 2000 request for negotiation of an interconnection agreement. Those negotiations, as alleged by both BellSouth and NOW, have been discontinued. Even if those negotiations had not been discontinued, the "window for arbitration" of unresolved issues has not yet occurred.

While the parties apparently have been engaged over a period of time in negotiation and litigation, BellSouth has not established a "start" date of negotiation of an agreement between the parties which would lead to the possibility of Commission arbitration of unresolved issues. Pursuant to Section 252 of the Telecommunications Act, the "start" date would be the date on which NOW requested negotiation of an agreement with BellSouth. As BellSouth has not established that "start" date of negotiations, BellSouth cannot and has not established that its petition was filed during the "window" for petitioning the Commission for arbitration of issues the parties have been unable to

resolve. Accordingly, the Commission lacks jurisdiction and the petition for arbitration must be  
DISMISSED.

IT IS SO ORDERED.

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DISTRICT III  
CHAIRMAN IRMA MUSE DIXON

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DISTRICT II  
VICE CHAIRMAN JAMES M. FIELD

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DISTRICT V  
COMMISSIONER DON OWEN

---

DISTRICT IV  
COMMISSIONER C. DALE SITTIG

---

DISTRICT I  
COMMISSIONER JACK "JAY" A. BLOSSMAN

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EXECUTIVE SECRETARY  
LAWRENCE ST. BLANC

**Service List**  
**Docket No. U-24762**

**Commissioners**

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**Walter Rutland - LPSC Utilities Division**

**Robert Crowe - LPSC Economics Division**

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**RA - Carroll H. Ingram, Ingram & Associates, PLLC, P.O. Box 15039, Hattiesburg, MS 39404-  
5039 (P-601-261-1385)(Fax-601-261-1393) (Rep. NOW Communications)**

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